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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 614

THEODORE SPECTOR,

Petitioner,

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Executive Order and regulations involved	2
Statement of the case	4
Reasons for granting the writ	10
Conclusion	19

CITATIONS

Cases:

Accardi v. *Shaughnessy*, 347 U.S. 260	14
Anti-Fascist Committee v. *McGrath*, 341 U.S. 123	10
Cash v. *Culver*, 358 U.S. 633	17
Cohen v. *Hurley*, 366 U.S. 117	18
Garland, Ex parte, 4 Wall. 333	18
Gideon v. *Wainwright*, 372 U.S. 335	17
Johnson v. *Zerbst*, 304 U.S. 458	17
Norwegian Nitrogen Products Co. v. *United States*, 288 U.S. 254	12
Peters v. *Hobby*, 349 U.S. 331	10
Powell v. *Alabama*, 287 U.S. 45	17
Power Reactor Co. v. *International Union*, 367 U.S. 396	12
Roth v. *Brownell*, 215 F.2d 500 (App. D.C.)	4
Service v. *Dulles*, 354 U.S. 363	14
Skidmore v. *Swift & Co.*, 323 U.S. 134	12
Theard v. *United States*, 354 U.S. 278	18
United States v. *Merz*, 376 U.S. 192	18
United States v. *Thoman*, 156 U.S. 353	15
Vitarelli v. *Seaton*, 359 U.S. 535	14
Watson v. *United States*, 355 U.S. 14	16
Watson v. *United States*, 142 Ct. Cl. 749, 162 F. Supp. 755	16
Wieman v. *Updegraff*, 344 U.S. 183	19

Page

Statutes, orders and regulations:

5 U.S.C. §§ 481, 485 15
5 U.S.C. § 483a 15
5 U.S.C. § 652, Lloyd-LaFollette Act 4
Executive Order 10590, 20 Fed. Reg. 409 ..... 2, 3, 8, 11, 12, 13
Executive Order 10925, 3 CFR 1961 Supp. 86 13
Department of Interior Order No. 2596 ..... 3, 14
Department of Interior Federal Personnel Manual Supplement 3, 15

Miscellaneous:

Dickerson, Legislative Drafting (1959) 15

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner, Theodore Spector, prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Claims entered in the above-entitled case on March 13, 1964.

OPINION BELOW

The opinion of the Court of Claims is not yet reported. It is attached in the appendix hereto.

JURISDICTION

The judgment of the Court of Claims was entered on March 13, 1964. A timely motion for rehearing was de-

nied on June 12, 1964. On September 4, 1964, the Chief Justice of the United States signed an order extending the time for filing this petition for a writ of certiorari to and including October 23, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. § 1255(1).

QUESTIONS PRESENTED

1. Whether Executive Order 10590, directing that the position of Employment Policy Officer for the handling of discrimination complaints by federal employees "shall be established outside of the division handling the personnel matters of the department or agency concerned," permits the designation as Employment Policy Officer of the Administrative Assistant Secretary of the Department of Interior who has administrative supervision of the personnel division and who is directly and regularly concerned with personnel procedures and policies.

2. Whether the Secretary of the Interior, having delegated to the Solicitor of the Department all of his authority respecting "the legal work, the attorney positions, and the attorney personnel of the Department of the Interior," including the power to make removals, may ignore that delegation and direct the discharge of an attorney for cause.

3. Whether the fair administration of federal employee dismissal proceedings permits a board composed largely of laymen to conduct a hearing and evaluate charges against an attorney that are so far-reaching and detailed in nature as to call into question his professional competence and his legal capacity to perform legal assignments.

EXECUTIVE ORDER AND REGULATIONS INVOLVED

Executive Order 10590, January 18, 1955, 20 Fed. Reg. 409:

Sec. 5. The head of each executive department and agency shall designate an official of his department or agency as Employment Policy Officer, and shall designate such Deputy Employment Policy Officers as may be necessary to assist the Employment Policy Officer to effectively carry out the policy of this order. The position of Employment Policy Officer shall be established outside of the division handling the personnel matters of the department or agency concerned. Each Employment Policy Officer shall be under the immediate supervision of the head of his department or agency, and shall be given the authority necessary to enable him to carry out his responsibilities under this order. All officials and employees of each department and agency shall be advised of the name of its Employment Policy Officer.

Department of Interior Order No. 2596, November 3, 1950:

Subject: Delegation of authority to the Solicitor

The Solicitor of the Department of the Interior may exercise all the authority of the Secretary of the Interior respecting the legal work, the attorney positions, and the attorney personnel of the Department of the Interior and its several agencies, including agencies established by the Secretary of the Interior to perform functions under the Defense Production Act of 1950.

Department of Interior Federal Personnel Manual Supplement, March 5, 1951:

Delegation of Authority. The official to whom authority has been delegated to make appointments is delegated the power to make removals to the extent of appointment authority, with the exception of those cases on which final removal action is reserved to the Office of the Secretary by Order 2597, or by the head of the bureau.

STATEMENT OF THE CASE

Petitioner, a non-veteran with competitive civil service status, was employed as an attorney with the United States Government from 1935 to 1957. He served in the Office of the Solicitor of the Department of the Interior from 1940 to 1957. In 1954 he had been summarily dismissed from his position without reason "for the good of the service" and as a consequence of a reorganization; this dismissal was held invalid by the Civil Service Commission in the light of *Roth* v. *Brownell*, 215 F.2d 500 (App. D. C.), and petitioner was ordered restored to his former position as a GS-13. Pl. Ex. 1.

Thereafter his GS-13 position was reclassified by the Department of Interior as a GS-11 position. On appeal by petitioner, the Civil Service Commission held that the position was properly that of a GS-12. Petitioner then instituted suit in the Court of Claims to recover the difference in pay between a GS-12 and that of a GS-13 in an accrued amount of $2,457.90. This action was settled out of court, and a judgment was entered by consent awarding petitioner the sum of $2,000.00. Pl. Exs. 1 and 2.

On December 6, 1956, petitioner was notified in writing of his proposed removal on the ground of inefficiency and incompetency, pursuant to the provisions of the Lloyd-LaFollette Act of 1912, as amended, 5 U. S. C. § 652. This notice, signed by the Solicitor of the Department (which constituted the only participation by the Solicitor in the dismissal proceedings), sought to support this charge by setting forth in detail ten specific instances wherein petitioner allegedly performed legal assignments "in an unprofessional, unreliable, inaccurate, and unresponsive manner." J. Ex. 1. Among these allegations were assertions that petitioner's legal memoranda not only reflected incomplete legal research but included erroneous

case citations, ungrammatical sentences, and incomplete and inaccurate conclusions of law. Attached to the charges were 49 documentary exhibits, consisting primarily of memoranda and letters between petitioner and his superior legal officers.

More specifically, it was alleged that petitioner's legal performance was inefficient and incompetent with reference to the following 10 legal problems assigned to him during 1955 and 1956 (J. Ex. 1):

1. A comparison of the 1936 Virgin Islands Organic Act with the Revised Virgin Islands Organic Act of 1954.

2. Whether the hospital files concerning Alaskan insane patients are subject to disposition by an appropriate federal agency or remain the property of the hospital.

3. Whether the Virgin Islands Corporation has authority to increase its employees' salaries.

4. Whether a REA cooperative could properly refuse to pay a portion of the claim found due a government contractor.

5. Whether an insane resident of Alaska committed to a hospital in Oregon could obtain a divorce under Alaskan law.

6. A memorandum on pending highway legislation on which the Department had been asked to comment.

7. Whether municipal rent control ordinances in the Virgin Islands were applicable to certain property owned by the United States.

8. The application of federal mineral laws to the Virgin Islands, with reference to pertinent statutes.

9. Whether a stepfather is obliged to pay the United States for the care and treatment of his stepchild in light of 48 U.S.C. § 48a and Alaskan laws.

10. Whether the territorial governments of Guam and American Samoa are considered instrumentalities wholly owned by the United States and whether non-federal employees who perform services for these activities are eligible for unemployment compensation.

Petitioner duly filed an extensive answering memorandum, refuting the charges in detail. Then, on May 20, 1957, the Administrative Assistant Secretary of the Department notified petitioner by letter that the matter had been referred to him and that on the basis of the charges and the answer thereto he had sustained the charges and had determined to dismiss petitioner from his job. This letter, 10 pages in length, purported to analyze the 10 specific charges, concluding as to each charge that petitioner's legal analysis and work had been inadequate. J. Ex. 3. Moreover, this letter went beyond the charges and asserted, in conclusionary form, that petitioner's "action and attitude were contrary to the relations normally expected between supervisor and employee." J. Ex. 3. The record does not indicate that the Administrative Assistant Secretary was an attorney or was otherwise qualified to evaluate matters of legal research and analysis.

Petitioner requested a hearing on these charges, a request that was granted. Departmental regulations provided that when such a hearing is granted "an impartial board will be designated," but no particular education, experience or other special qualifications were required for service on such a board. Finding 11. The Administrative Assistant Secretary accordingly appointed a three-man committee of Departmental representatives to conduct the hearing and "to submit your findings and recommendations" to the Administrative Assistant Secretary for his consideration. J. Ex. 5. Only one member of this committee was a member of the bar; but he had not practiced for many years and was not employed in the De-

partment in a legal capacity. The other two members were non-lawyers. Finding 10.

This committee held a hearing, at which petitioner was represented by an attorney. No standards were given the committee for evaluating petitioner's legal work, and no legal experts testified as to the legal criteria expected of an attorney in petitioner's position. But the committee did have before it the May 20 letter of the Administrative Assistant Secretary analyzing the charges in their legal setting and resolving them all against the petitioner. On June 21, 1957, the committee notified the Administrative Assistant Secretary by letter that it had unanimously found "that the charges of inefficiency and incompetency in the ten specific cases set forth in the memorandum of December 6, 1956 from the Solicitor to Mr. Spector have been sustained by the preponderance of pertinent evidence before the Committee." J. Ex. 8. The committee accordingly recommended "that the decision to separate Mr. Theodore Spector from his position be sustained." J. Ex. 8. No findings of fact or statement of reasons accompanied this conclusion and recommendation. Finding 13.

On July 3, 1957, petitioner was notified by the Secretary of the Interior that, upon his review of the record before the committee and upon consideration of the committee's recommendation, "it is my decision to sustain your separation, and you are hereby notified that it will be effective July 31, 1957." J. Ex. 9. Actual separation of petitioner from his job did not occur until November 30, 1957, pending completion of the independent proceeding instituted by petitioner charging religious discrimination against him.

Petitioner duly perfected an appeal of his dismissal on incompetency charges to the Civil Service Commission. Thereafter, the Commission affirmed the dismissal upon

review of the procedural requirements under its regulations. But that agency declined to review petitioner's claim that the Department of Interior had violated its own procedural regulations; that claim was referred back to the Department which, on February 19, 1959, notified petitioner that its regulations had not been violated. J. Ex. 14. Petitioner thereby exhausted all attempts to obtain an administrative reversal of the order of dismissal.

In the meantime, petitioner had filed a complaint pursuant to Executive Order 10590, alleging that religious or anti-Semitic discrimination was the moving force behind the dismissal action sought to be taken against him. This complaint was processed separately from the proceedings dealing with the charges of incompetency and inefficiency. And the processing of the discrimination complaint within the Department was at all times under the direction and supervision of the same Administrative Assistant Secretary who had supervised the processing of the charges of incompetency and inefficiency. Moreover, in thus processing the discrimination complaint, this Administrative Assistant Secretary was acting as the designated Employment Policy Officer of the Department of Interior for purposes of executing the anti-discrimination policies of Executive Order 10590. He so acted despite the fact that he was in charge of personnel matters within the Department and despite the fact that the Executive Order provided that "The position of Employment Policy Officer shall be established outside of the division handling the personnel matters of the department or agency concerned."

On July 25, 1957, the Administrative Assistant Secretary granted petitioner's request for a hearing on the discrimination complaint and appointed another three-man committee of Departmental officials to hear this contention. J. Ex. 15.

Following a hearing on August 1, 1957, this second committee concluded that "there is no factual support

for the contention that your removal from office on charges of incompetency was motivated by discrimination on grounds of anti-Semitism" and that the complaint should therefore be denied. J. Ex. 16. This determination was affirmed by the Department, speaking again through the Administrative Assistant Secretary. J. Ex. 16.

Petitioner thereafter appealed to the President's Committee on Government Employment Policy for a review of that decision. The files and transcript of the hearing were forwarded to the Committee. And on October 11, 1957, the Executive Director of that Committee advised the Secretary of Interior that "After careful consideration of all the records and evidence presented in this case, it is the judgment of the Committee that on the basis of the record and evidence presented to the President's Committee, the allegation of religious discrimination made by Mr. Spector is not substantiated." J. Ex. 18. Petitioner was informed of this judgment. Thus were completed all available administrative proceedings and, as indicated, petitioner's separation from his position was effectuated on November 30, 1957.

Petitioner instituted this back pay suit in the Court of Claims on May 22, 1959, alleging that he had been arbitrarily dismissed in bad faith and in violation of law and regulations. He sought recovery of back pay from the date of dismissal to the time of judgment computed at the rate of $11,090.00 per year (the GS-13 rate) less applicable set-offs. As noted in the opinion below, the proceedings before the Court of Claims developed so that only procedural claims came to issue. Through cross-motions for summary judgment, and by stipulation of the parties, the only issues were: (1) Whether petitioner's removal from his position violated applicable regulations of the Department of Interior, (2) Whether the Department's designation of the Administrative Assistant Secretary as the Employment Policy Officer to supervise the

processing of discrimination claims, such as the one made by petitioner, violated Section 5 of Executive Order 10590, (3) Whether the three members of the hearing board appointed to hear the appeal of petitioner with respect to his professional competence were qualified to evaluate the charges, and (4) Whether the Civil Service Commission properly declined to consider whether the Department of Interior had followed its own regulations in effectuating the dismissal.

All of these issues were resolved against petitioner by the Court of Claims and his petition was ordered dismissed.

REASONS FOR GRANTING THE WRIT

1. The decision below that the plain words of an Executive Order may be violated by a contrary administrative construction never authorized or ratified by the President is in conflict with the applicable decisions of this Court.

This Court has made it clear that federal agencies and officers, while free to give reasonable scope to the terms of an Executive Order or statute conferring their authority, "are not free to ignore plain limitations on that authority." *Peters* v. *Hobby*, 349 U.S. 331, 345. And where such limitations are ignored under the guise of an administrative construction of the plain words, the official "does not make that act legal by doing it and then invoking the doctrine of administrative construction to cover it." *Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 136. In such a situation, "Nothing short of explicit Presidential action could justify a conclusion that the limitations on the . . . powers had been eliminated." *Peters* v. *Hobby*, *supra*, 345.

The decision below cannot be squared with the principles enunciated in the *Peters* and *Anti-Fascist Committee*

cases. To implement the federal employee anti-discrimination program, Section 5 of Executive Order 10590 provided for the designation within each agency or department of an Executive Policy Officer, charged with the duties of receiving and investigating complaints of alleged discrimination in personnel matters within his agency or department and of recommending necessary corrective action. Section 5 further made plain, in words admitting of no doubt or ambiguity, that "The position of Employment Policy Officer shall be established outside of the division handling the personnel matters of the department or agency concerned."

In this instance, however, the Department of the Interior designated the Administrative Assistant Secretary as that department's Employment Policy Officer for purposes of helping execute the program embodied in Executive Order 10590. Yet Finding 5 of the Court of Claims makes evident that this Administrative Assistant Secretary "directs and supervises the . . . Division of Personnel Management" and is "directly and regularly concerned with personnel procedures and policies, among other things." Indeed, it was he who supervised the processing of the incompetency charges against petitioner —an obvious personnel matter. Thus by the plain words of Section 5 of Executive Order 10590 he was ineligible to serve as an Employment Policy Officer and to participate in the proceedings on petitioner's complaint of discrimination.

The Court of Claims sought to justify this violation of the Executive Order by reference to a "contrary construction contemporaneously adopted and followed by the agency responsible for enforcing the Order and the then anti-discrimination program."[1] Presumably that state-

[1] None of the decisions cited by the court in support of this statement involved an administrative construction of an Execu-

ment had reference to Findings 36 and 37, which found that the President's Committee on Government Employment Policy, charged with over-all enforcement of Executive Order 10590, was aware that various departments and agencies had designated their respective Administrative Assistant Secretaries as Employment Policy Officers; such designations were approved by the Committee on the theory that these officials, while they might have administrative responsibilities with respect inter alia to personnel divisions, were outside, or were not "in", the respective personnel divisions for purposes of Executive Order 10590.

Such an administrative construction is contradicted by the plain language of the Executive Order. The Court of Claims itself conceded that if "we were to look only at the words of the Executive Order, we might perhaps agree with plaintiff that the Administrative Assistant Secretary was too close to the run of personnel divisions within the Department to be a proper Employment Policy Officer." So enmeshed was this officer with personnel matters and with administrative direction of the personnel division that it stretches credulity to view him as "outside of the division handling the personnel matters," as Executive Order 10590 requires. Indeed, the obvious purpose of this language was to insure that personnel officers, be they administrators or subordinates, would not be involved in the handling of discrimination complaints; otherwise there might be a conflict of interest arising from the personnel officer's processing of charges that his action—or action that he had supervised or overseen—had been motivated by discriminatory considera-

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tive Order contrary to its plain terms and unauthorized and unratified by the President. The decisions in *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, *Skidmore* v. *Swift & Co.*, 323 U.S. 134, and *Power Reactor Co.* v. *International Union*, 367 U.S. 396, merely involved permissible administrative constructions of ambiguous or unclear Congressional enactments.

tions. And employees are assured by the language of the Order that their discrimination complaints against personnel officers will not be handled by those same personnel officers.

In these circumstances, it was impermissible under the doctrines of the *Peters* and *Anti-Fascist Committee* cases for the Court of Claims to rely upon a contrary administrative construction to deny petitioner's claim. There being a complete absence of any Presidential authorization or approval or ratification of that construction (see Finding 30), the plain words of the Executive Order must prevail.

The failure of the Court of Claims to follow the dictates of the *Peters* and *Anti-Fascist Committee* cases makes appropriate the invocation of this Court's review powers. The need for further elucidation of the doctrines of those cases, doctrines designed to guarantee procedural rights given by the Chief Executive, is made manifest by the unsatisfactory treatment of the problem by the Court of Claims.

The continuing importance of this problem is demonstrated by the promulgation on March 6, 1961, of Executive Order 10925, 3 CFR 1961 Supp. 86, which established the President's Committee on Equal Employment Opportunity to exercise all of the powers, functions and duties of the President's Committee on Equal Employment Opportunity under Executive Order 10590. Thereby continued in effect were the provisions of Section 5 of Executive Order 10590, requiring that Employment Policy Officers be designated from outside personnel divisions. It thus becomes of continuing and current importance, from the standpoint of all federal employees, to know if discrimination complaints are to be handled in accordance with the Presidential direction, or whether they may continue to be processed and resolved by personnel officers—

contrary to Presidential policy—as the court below has sanctioned.

2. The decision below that the Secretary of the Interior could exercise his residual powers over attorney personnel matters to order petitioner's dismissal is in conflict with this Court's decisions that governmental officers are bound to respect their own administrative regulations and delegations of power.

This Court, in a series of cases, has enunciated the principle that once an administrative regulation or delegation of power has been promulgated all governmental officials must respect and obey the procedural courses of action embodied in such regulation or delegation. From *Accardi* v. *Shaughnessy*, 347 U.S. 260, through *Service* v. *Dulles*, 354 U.S. 363, down to *Vitarelli* v. *Seaton*, 359 U.S. 535, this doctrine has been reiterated and applied in a variety of circumstances.

That doctrine is fully applicable here and the failure of the Court of Claims even to recognize it, much less apply it, has created an irreconcilable conflict with the *Accardi*, *Service* and *Vitarelli* decisions. Review of the decision below becomes appropriate in light of this conflict once it is seen that the applicable delegation of power was ignored and violated in this instance.

The Court of Claims here found (Finding 2) that at all times material the Department of the Interior had in effect an order delegating to the Solicitor of the Department "all the authority of the Secretary of the Interior respecting the legal work, the attorney positions, and the attorney personnel of the Department of the Interior." While the order spoke in terms indicating that the Solicitor "may" exercise the Secretary's authority in this respect, the plain import of the order was that all of the authority was in fact delegated to the Solicitor and was to be exercised by him. And it was a delegation that,

at least in part, was for the benefit of the Department's attorney personnel, assuring them that their legal work and personnel matters would be supervised by the Department's top attorney rather than by the Secretary, who might be a layman.[2]

That this delegation to the Solicitor included the power to discharge attorney personnel was made manifest by the further Departmental regulation (see Finding 3) that the official "to whom authority has been delegated to make appointments is delegated the power to make removals to the extent of appointment authority."

It would thus seem that the Secretary effectively denied himself the right otherwise resident in him to make appointments or removals with respect to attorneys in the Department. By his own choice, he retained no residual powers over such personnel matters. The fact that the Secretary is still charged by Congress with the powers as head of the Department of the Interior, 5 U.S.C. §§ 481, 485, a fact relied upon by the Court of Claims, does not negate the fact that his powers with reference to attorneys were all delegated to the Solicitor[3]—although the Secretary could, of course, alter or withdraw the delegation.

Since the delegation remained in effect at all material times herein, the Secretary was without authority to

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[2] "It is familiar doctrine that where a statute confers a power to be exercised for the benefit of the public or of a private person, the word 'may' is often treated as imposing a duty rather than conferring a discretion." *United States* v. *Thoman*, 156 U.S. 353, 359, citing cases. See also Dickerson, Legislative Drafting (1959), Secs. 7.3 and 7.4.

[3] Congress has provided in 5 U.S.C. § 483a that the "legal work of the Department of the Interior shall be performed under the supervision and direction of the Solicitor of the Department." He is appointed by the President with the advice and consent of the Senate.

pass upon the incompetency charges against petitioner or to order his dismissal; only the Solicitor could do that.

The importance of this question in the administration of federal employment practices is obvious. If administrative personnel, including heads of departments, are to be free to ignore their own delegations of authority, promulgaged in part for the benefit of federal employees, the delegations will be drained of all meaningfulness. This Court has consistently ruled that such regulations may not be ignored with impunity but the lesson has apparently not been fully learned. And once again the Court of Claims should be reminded that the *Accardi-Service-Vitarelli* doctrine remains in effect. See *Watson* v. *United States*, 355 U.S. 14.[4]

3. The decision below raises an important question as to the fairness of having laymen evaluate the professional qualifications of an attorney employed by a federal department.

In response to petitioner's contention that it was basically unfair for laymen, untutored in the law and in the methods of legal research, to sit on a committee to evaluate charges of professional inefficiency and incompetence, the Court of Claims could only say that "The world has not yet passed into the stage at which it will be beyond the permissible realm of debate whether a professional's performance can be evaluated by an informed layman." No finding was made that these laymen were in fact "informed."

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[4] In the *Watson* case, this Court summarily granted certiorari, vacated a judgment of the Court of Claims and remanded the case for consideration in light of *Service* v. *Dulles*, 354 U.S. 363. The Court of Claims had held that noncompliance with two administrative regulations, establishing procedures for removal of probationary employees, formed no basis for a back pay claim. Following the remand, the Court of Claims held that, on the basis of the violations of these regulations and in light of the *Service* decision, the plaintiff should recover. *Watson* v. *United States*, 142 Ct. Cl. 749, 162 F. Supp. 755.

Thereby raised is an important and novel question in federal administrative law, one that merits review by this Court. The charges against petitioner were so much an inquiry into his capacities as an attorney and his ability to function as a legal researcher that only one trained in the law could be expected to evaluate the charges properly. Mere laymen, inexperienced in the law and operating without expert guidance, would have difficulty in this case determining the propriety or completeness or accuracy of a legal analysis of federal mineral laws or Alaskan divorce laws. As this Court has said in another context, "Even the intelligent and educated layman has small and sometimes no skill in the science of law." *Powell* v. *Alabama*, 287 U.S. 45, 69; *Johnson* v. *Zerbst*, 304 U.S. 458, 463. Just as the legal significance under Florida law of an accomplice's damaging testimony was held in *Cash* v. *Culver*, 358 U.S. 633, 638, to be "beyond the ken of a layman," so too in this case a layman could not be expected to make an intelligent evaluation of an analysis as to whether the Virgin Islands Corporation had authority to increase its employees' salaries. Compare *Gideon* v. *Wainwright*, 372 U.S. 335.

Indeed, where professional qualifications are at stake, it has become traditional if not essential that one's professional peers sit in judgment. Doctors charged with professional incompetence are evaluated by medical practitioners; the qualifications or lack of qualifications of engineers are determined by professional engineers; and the admission or disbarment of lawyers on grounds of competence or incompetence is a matter for experienced judges or attorneys. And the judicial control that has always been exercised over the determination of lawyers' qualifications and disqualifications reflects the professional expertise that enters into such determination. That determination is more than a ministerial or lay function. It partakes of judicial power, exercisable at most by

other lawyers as officers or agents of the court. See *Ex parte Garland*, 4 Wall. 333, 378; *Theard* v. *United States*, 354 U.S. 278, 281; *Cohen* v. *Hurley*, 366 U.S. 117, 123-124. Yet, in effect, petitioner was subjected to a bar examination by untrained laymen.

The inaptitude of the lay committee members in this case was emphasized by the fact that no standards were given them, and no expert witnesses testified, as to the techniques for proper evaluation of legal research.[5] And they failed to state the rationale of their unfavorable conclusion, merely indicating the end result of their inquiry. Precisely this kind of untutored conduct by a lay tribunal dealing with legal matters led this Court in *United States* v. *Merz*, 376 U.S. 192, 198, to warn against establishing "a tribunal that may become free-wheeling, taking the law from itself, unless subject to close supervision." If laymen, inexperienced in the law, are to be used to make legal evaluations, they must at least be instructed as to the manner of conducting the hearing, the admissibility of evidence, and the standards to follow; and they must "state not only the end result of their inquiry, but the process by which they reached it." *United States* v. *Merz*, *supra*, 199. The complete failure to insist upon such procedural safeguards in this case casts serious doubt upon the basic fairness of the procedure accorded the petitioner.

Indeed, the dangers implicit in such an unsupervised use of laymen—whether they be committee members, an Administrative Assistant Secretary, or the Secretary of the Interior himself—underscore the purpose and the value of delegating to the Solicitor all power to deal with attorney personnel problems. Granting to the Solicitor, an attorney, the power to evaluate charges of legal in-

[5] The committee had before it the analysis and pre-judgment of the charges by the Administrative Assistant Secretary, but there was no guidance given as to its relevance or probative value.

competence and to take appropriate action serves to preclude the unfairness that took place here. Yet that delegation was blatently ignored and its intended benefits were unavailable.

The result is an issue that deserves exploration by this Court. It is an issue that vitally affects the fairness and due process of procedures for evaluating the professional competence of all lawyers in the federal service. The impact of the procedures approved by the Court of Claims falls not only on this petitioner but on all government attorneys whose professional qualifications are called into question.*

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari to review the judgment of the Court of Claims should be granted.

Respectfully submitted,

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October 23, 1964.

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* The impact on the petitioner, of course, is not inconsequential. Petitioner, a member of the New York bar since 1924 and a member of this Court's bar since 1941, has in effect been found by laymen to be professionally inefficient and incompetent, making it impossible for him to find legal employment of the grade in which he served prior to dismissal. Cf. *Wieman* v. *Updegraff*, 344 U.S. 183, 192. For a few years following dismissal, he could find no gainful employment.